

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WADLEY PIERRE,

Plaintiff,

v.

Civil Action No. 13-12055-MLW

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, MARTIN BRESLIN,
and RICHARD SPINGEL,

Defendants.

DEFENDANTS' PARTIAL MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), defendants President and Fellows of Harvard College ("Harvard"), Martin Breslin ("Breslin"), and Richard Spingel ("Spingel") (collectively "Defendants") hereby move to partially dismiss plaintiff Wadley Pierre's ("Plaintiff") First Amended Complaint. In support of their motion, the Defendants rely upon their Memorandum in Support of Defendants' Partial Motion to Dismiss ("Memorandum"). The Defendants also rely on the Affidavit of Amy Silverman Ostiguy, attaching a document which is referred to and relied on in Plaintiff's Complaint.

As set forth in Defendants' Memorandum, the Plaintiff has brought claims for hostile work environment (Count I against all defendants), discrimination on the basis of race and national origin in violation of M.G.L. c. 151B (Count II against all defendants), retaliation in violation of M.G.L. c. 151B (Count III against all defendants), intentional infliction of emotional distress (Count IV against Harvard and Breslin), and for a violation of the Massachusetts Civil Rights Act (Count V against Breslin). The Court should dismiss part of the Plaintiff's claims for

discrimination and retaliation as they are time-barred or otherwise fail to state a claim upon which relief may be granted. The Court should likewise dismiss the Plaintiff's claim for intentional infliction of emotional distress against Harvard as it is barred by the exclusivity provision of the Workers' Compensation Act, M.G.L. c. 152 § 24. In addition, the Court should dismiss Spingel from the case entirely as the Plaintiff never named Spingel as a respondent in the administrative charge, thereby failing to exhaust his administrative remedies.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request a hearing on this motion.

Respectfully submitted,

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,
MARTIN BRESLIN, and
RICHARD SPINGEL,

By their attorneys,

/s/ Amy Silverman Ostiguy
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Dated: October 29, 2013

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that prior to filing this motion, on October 29, 2013, she conferred, in good faith, with Plaintiff's counsel in an attempt to resolve or narrow the issue(s) in dispute, but that the parties have been unable to do so.

/s/ Amy Silverman Ostiguy
Amy Silverman Ostiguy

CERTIFICATE OF SERVICE

I, Amy Silverman Ostiguy, hereby certify that this document was filed through the ECF system on this date, and that a true paper copy of this document will be sent to those indicated as non- registered participants on the Notice of Electronic Filing by first class mail on the same date.

Dated: October 29, 2013

/s/ Amy Silverman Ostiguy
Amy Silverman Ostiguy